

No. 11,841

IN THE

United States Court of Appeals
For the Ninth Circuit

ED DEBON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S PETITION FOR RECONSIDERATION OF HIS
PETITION FOR A REHEARING.

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*To the Honorable William Denman, Presiding Judge,
and to the Honorable Associate Judges of the
United States Court of Appeals for the Ninth
Circuit:*

The appellant's petition for a rehearing was denied by this Court for the reasons expressed in its Opinion (1) that the evidence was sufficient, if believed by the jury, to disclose that the appellant asked Hildebrand to file the mail order requests and (2) that there was no evidence that Hildebrand was introduced to the appellant as a veteran dealer.

I.

There is no evidence in the record, direct or inferential, showing that the appellant asked Hilde-

brand to file any mail order requests and there is none that DeBon had any knowledge that mail order requests were required to be filed.

II.

The evidence shows that Hildebrand was introduced to the appellant as a veteran dealer—that Hildebrand actually had been in partnership with a Mr. Mee of Bakersfield in the automobile business who was duly licensed as such a dealer.

The appellant DeBon testified that Hildebrand was introduced to him as a “veteran dealer”. See R. 142, reading as follows:

“Q. How did you happen to buy them from Mr. Hildebrand?

A. He was introduced to me as a dealer.

Q. He was introduced to you as a dealer, as one having a dealer’s license?

A. Yes.”

At R. 87 Hildebrand, a Government witness, testified that he (Hildebrand) was in the motor business with Mr. Mee of Bakersfield and that they were certified to the WAA as a veteran dealer. That testimony reads as follows:

“Q. Just one more question: In your dealings with the Mee Company, were you certified to the War Assets Administration as what is known as a veteran dealer?

A. Yes, we were.”

And at R. 90, Hildebrand also testified to the same fact, as follows:

“Q. You were listed as a dealer?

A. Yes.

* * * * *

Q. You were a dealer at the time you met Mr. De Bon is that correct?

A. Yes.”

And at R. 154, the appellant testified that he thought Hildebrand and Csaki were in a partnership.

“Q. One further question: When Csaki came into the transaction, as it then appeared he was then on the bill of sale, did you make any protest to Hildebrand or Csaki?

A. I thought they were in partnership as a dealer.

Q. You thought they were in partnership?

A. Yes.

Q. Did Hildebrand ever represent to you that Csaki was his partner?

A. No, but he told me that he had a partner, but I didn't know who he was and never met him until that day when I made final payment.”

And at R. 150 DeBon further testified that he thought he was buying from a veteran dealer:

“Q. I should have said the 24th, just in regard to those White trucks: Didn't you think it was strange that Oscar Csaki, Hildebrand and yourself were together and these papers were executed by Csaki to you; didn't you think then that somebody's priorities were being used?

A. I didn't know it. I thought I was doing business with a dealer where I could buy from one dealer to another, like we do every day.

* * * * *

Q. You knew both these sales were on priorities?

A. Yes.

Q. Did you know that one of them was restricted to veterans alone?

A. Or veteran dealers."

On the basis of that testimony alone it is clear that Hildebrand was introduced to the appellant as a veteran dealer and that the Opinion of this Court upon the Petition for Rehearing reached an erroneous conclusion. In consequence, the question of law put by the jury to the trial judge for clarification, viz. (R. 202):

"The third question is, Can a dealer buy on a veteran's priority and sell to a non-veteran on a commission basis?"

was a question highly material to the issues and the appellant was entitled to an instruction that if the jury found that Hildebrand held himself out to the appellant to be a veteran dealer the appellant was justified to rely on the representation and in buying the trucks. See *Bollenbach v. U. S.*, 326 U.S. 607, 612-614, and *M. Kraus & Bros. v. U. S.*, 327 U.S. 614, 617.

Furthermore, I desire to call to the Court's attention that the Government in this case failed to prove that the appellant had any intent to commit a crime, or any knowledge that a crime was being committed. This contention is proved by the Government's own witness, John Steven Hildebrand (R. 63).

"Q. (by Mr. Tramutolo). All right, did you ever tell Mr. De Bon that you had to do anything

irregular or illegal and dishonest to get these trucks for him?

A. No, all I told Mr. De Bon was that all that I could do was put in for the units and just hope to get them, that was all."

Dated, San Francisco, California,
June 15, 1949.

Respectfully submitted,

CHAUNCEY TRAMUTOLO,
*Attorney for Appellant
and Petitioner.*

CERTIFICATE OF COUNSEL.

The within petition for reconsideration of appellant's petition for a rehearing is well founded in point of law and fact and is not interposed for delay.

Dated, San Francisco, California,

June 15, 1949.

CHAUNCEY TRAMUTOLO,
*Attorney for Appellant
and Petitioner.*